(18)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI S.R. NAYAK, C.J.
AND HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO.2584 OF 2001

PETITIONERS

1. The State of Chhattisgarh Through Secretary Revenue Department Chhattisgarh, Raipur
2. Commissioner Bilaspur Division Bilaspur, Chhattisgarh
3. Collector, Raigarh Chhattisgarh
4. Joint Director Treasuries Bilaspur, Chhattisgarh

Vs.

RESPONDENTS

1. Registrar MP Administrative Tribunal Jabalpur
2. Ku. Dulari Thawait, Aged about 45 d/o Late Shri Mahatma Thawait Occupation – Service Second Grade Clerk (LDC) In the office of the Collector Raigarh, Chhattisgarh

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Present : Shri, Utkarsh Verma, learned Dy. G.A. for the State of Chhattisgarh and its Authorities.
Shri Ashish Shrivastava, learned counsel for respondent No.2.

ORAL ORDER

(Passed on 28th July, 2006)

The following oral order of the Court was passed by **S.R. Nayak, CJ:**

The State of Chhattisgarh and its authorities being aggrieved by the order of the Madhya Pradesh State Administrative Tribunal, Jabalpur (for short 'the Tribunal') dated 13/07/1998 passed in Original Application No.671 of 1993 have preferred this writ petition. By the impugned order, the Tribunal has allowed the application of the second respondent, and the petitioners herein are directed to release increments

to her from April 1989 till date and to fix her salary in the relevant pay-scale and grant subsequent pay-scales given to the similarly circumstanced other employees.

(2) The background facts of the case be noted first: The second respondent was initially appointed for election duty on 19/01/1971 and subsequently she was appointed on 04/12/1971 as per Annexure-A/2 as Second Grade Clerk on temporary basis. On 31/03/1972, as per Annexure-A/3, the second respondent was regularly absorbed as Second Grade Clerk. Thereafterwards, on 03/05/1972, as per Annexure-A/4, the second respondent was appointed in the time-scale of Rs.90-170/-. It appears that the erstwhile Government of Madhya Pradesh issued a Circular dated 19/04/1968 providing for grant of two advance increments to those Lower Division Clerks who pass typing examination in Hindi conducted by any of the agencies recognized by the General Administration Department of the Government of Madhya Pradesh. At this stage itself, it needs to be noticed that when the second respondent was appointed and her services were regularized in the year 1971, it was not the prescribed qualification for the post of Lower Division Clerk to pass typing examination in Hindi. But, in the Circular dated 19/04/1968, as an incentive and encouragement, a provision was made to grant two advance increments to all those Lower Division Clerks who pass the typewriting examination in Hindi conducted by any of the recognized agencies. Then came another Circular of the Government dated 03/06/1977, a copy of which is appended to the writ petition at page 28 of the material papers as Annexure-A/6, which reads as follows:

"मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

एफ कमांक 3–4/77/3/1 भोपाल, दिनांक 3 जून, 1977
13 ज्येष्ठ 1899

प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, मध्यप्रदेश, ग्वालियर,
समस्त संभागीय आयुक्त,
समस्त विभागाध्यक्ष,
समस्त जिलाध्यक्ष,
मध्यप्रदेश

विषयः– निम्न श्रेणी लिपिक एवं मुद्रलेखक के पद पर नियत वेतन पर नियुक्त व्यक्तियों को हिन्दी मुद्रलेखन परीक्षा उत्तीर्ण करने से छूट देने संबंधी।

संदर्भः– इस विभाग का दिनांक 17 मई, 1977 का ज्ञापन एफ कमांक 3–4/77/3/1

इस विभाग के दिनांक 28 अगस्त, 1971 के ज्ञापन कमांक 458/सी0आर0 101/1(3) द्वारा निम्न श्रेणी लिपिक एवं मुद्रलेखक के पद पर नियुक्ति के लिए उम्मीदवारों को मध्यप्रदेश शीघ्रलेखन एवं मुद्रलेखन परिषद् से हिन्दी मुद्रलेखन परीक्षा उत्तीर्ण होना अनिवार्य किया गया था, किन्तु नई हिन्दी मुद्रलेखकों के अभाव में अन्य उम्मीदवारों को इस शर्त पर अस्थाई रूप से नियुक्त करने की छूट दे दी गई थी कि ऐसे व्यक्तियों को मध्यप्रदेश शीघ्रलेखन एवं मुद्रलेखन परिषद् की हिन्दी मुद्रलेखन परीक्षा उत्तीर्ण करने के पश्चात ही उक्त पद में नियमित वेतनमान पर नियुक्त किया जायेगा। इस बीच में उन्हें निश्चित वेतन जो कि निम्न श्रेणी लिपिक के वेतनमान का न्यूनतम है, मंहगाई भत्ते के साथ मिलेगा।

इस आदेश के बाद निम्न श्रेणी लिपिक एवं मुद्रलेखक के पद में कई व्यक्तियों की नियुक्तियां निश्चित वेतन पर की गई है और उन्हें समय–समय पर शासन द्वारा हिन्दी मुद्रलेखन परीक्षा उत्तीर्ण करने के लिए अतिरिक्त समय दिया जाता रहा है। शासन द्वारा अंतिम बार संदर्भ में उल्लेखित ज्ञापन के द्वारा यह समय 18 जून, 1977 से 3 माह

के लिए और बढ़ाया गया है। शासन द्वारा अब यह निर्णय लिया गया है कि अभी तक निश्चित वेतन पर नियुक्ति निम्न श्रेणी लिपिकों के लिए मध्यप्रदेश शीघ्रलेखन एवं मुद्रलेखन परिषद् की हिन्दी मुद्रलेखन परीक्षा उत्तीर्ण करने के बदले नियुक्ति अधिकारी द्वारा उनके लिए हिन्दी मुद्रलेखन की विभागीय परीक्षा आयोजित की जाये। ऐसे व्यक्तियों को यह विभागीय परीक्षा उपर्युक्त बढ़ाए हुए समय के भीतर उत्तीर्ण करना आवश्यक होगा, अन्यथा उनकी सेवायें तत्काल समाप्त कर दी जायेंगी। इस विभागीय परीक्षा में उत्तीर्ण होने के लिए मुद्रलेखन की गति कम से कम 25 शब्द प्रति मिनट होना चाहिए। नियुक्ति अधिकारी को यह चाहिए कि वे इस परीक्षा को शीघ्रतिशीघ्र आयोजित करें।

सभी नियुक्ति अधिकारियों का ध्यान इस विभाग के दिनांक 18 जून, 1975 के ज्ञापन एफ कमांक 3–19/75/3/1 की ओर आकृष्ट किया जाता है, जिसमें निम्न श्रेणी लिपिक एवं मुद्रलेखक के पद पर नियुक्ति के लिए शासन द्वारा यह निर्णय लिया गया है कि इस पद पर किसी ऐसे व्यक्ति की किसी भी परिस्थिति में, नियुक्ति न की जाए, तो शासन द्वारा मान्यता प्राप्त बोर्ड से हिन्दी मुद्रलेखन की परीक्षा उत्तीर्ण न हो, किन्तु यह शर्त अनुसूचित जाति एवं अनुसूचित जनजाति के उम्मीदवारों पर लागू नहीं होगी। यदि नियुक्ति अधिकारी द्वारा भविष्य में इस निर्णय की अवहेलना की जाती है और किसी ऐसे व्यक्ति को निम्न श्रेणी लिपिक के पद पर नियुक्त किया जाता है, जो इस पद के लिए शासन द्वारा निर्धारित अर्हताएं नही रखता है, तो ऐसी नियुक्तियों को अनियमित माना जाएगा और इसकी पूरी जिम्मेदारी उनकी होगी, जिसके लिए उनके विरूद्ध आवश्यक कार्यवाही की जा सकती है।

मध्यप्रदेश के राज्यपाल के नाम से तथा
आदेशानुसार

सही–जी0वेंकन्ना
उप सचिव
मध्यप्रदेश शासन
सामान्य प्रशासन विभाग"

As could be seen from Annexure-A/6, it appears that the Government of Madhya Pradesh had taken a decision vide Memorandum No.3-19/75/3/1dated 18/06/1975 that candidates for the post of Lower Division Clerk and Typist should have passed the Shorthand and Typing Examination in Hindi from a Board recognized by the State Government, but, in the same circular, the Government directed that the said direction has no application in the case of candidates belonging to scheduled castes and scheduled tribes. Further, the Government in the same circular directed the appointing authorities, i.e., jurisdictional Collectors to conduct typing examination at their level. In pursuance of Annexure-A/6 Circular, admittedly, the second respondent appeared for the typing examination conducted by the Collector and she has passed the typing examination. The certificate issued in that regard is produced as Annexure-A/7. Having passed the typewriting examination in Hindi conducted by the Collector, Raigarh, the second respondent put forth her claim to two advance increments in terms of Annexure-A/5 Circular, and it was granted to her as per Annexure-A/8 dated 20/05/1998. It appears that the advance increments so sanctioned had been paid to her till the year 1988 and thereafterwards the increments were refused to her on the ground that in terms of Annexure-A/5 Circular, she is not entitled to advance increments, because, she did not pass the typing examination in Hindi conducted by a Board/Institution recognized by the erstwhile State of Madhya Pradesh, but, passed the typing examination conducted by the Collector, Raigarh. That led to the second respondent instituting Original Application No.617 of 1993 before the Tribunal. Before the Tribunal, on behalf of the second respondent, it was contended that since she has passed typing examination conducted by the District Collector, Raigarh,

she is entitled to two advance increments and the refusal of the appointing authority to pay increments after 1989 was illegal. It was also contended on behalf of the second respondent that a similarly-circumstanced employee, one Hiralal Naik, was also granted two advance increments, but, in his case, the appointing authority did not stop payment of increments as has been done in her case and therefore, looking from that angle, the refusal to pay advance increments by the appointing authority tantamounts to invidious discrimination. The Original Application was contested by the petitioners herein by filing return. In the return, the only substantive ground urged was that the passing of the typing examination in Hindi conducted by the Collector, Raigarh cannot be equated to passing of typing examination in Hindi conducted by a Board/Institution recognized by the Government of Madhya Pradesh as directed in Annexure-A/5. The Tribunal having found merit in the aforementioned two contentions raised on behalf of the second respondent and having opined that the Annexures-A/5, A/6 and A/8 are all issued by the same Department, i.e., the General Administration Department and if those circulars read together would show the concern of the State Government to encourage the Lower Division Clerks who pass the typing examination in Hindi by offering incentive in the form of two advance increments, allowed the Original Application and granted the relief in terms as already pointed out supra. That is why the State Government of Chhattisgarh and its authorities have approached this Court under Articles 226/227 of the Constitution of India.

(3) We have heard learned counsel for the parties. Shri Utkarsh Verma, learned Dy. Govt. Advocate, would reiterate the same contention advanced before the Tribunal before us also to stop payment of two

increments. According to the learned Deputy Govt. Advocate, though the second respondent was not entitled to two advance increments, two advance increments were wrongly sanctioned to her vide Annexure-A/8 and therefore, there was every justification for the appointing authority to withdraw those two increments and the action of the appointing authority could not be faulted with. *Per contra,* Shri Ashish Shrivastava learned counsel appearing for the second respondent while adopting the reasoning of the Tribunal would support the impugned order of the Tribunal.

(4) The petitioner belongs to scheduled caste. As already pointed out supra, when second respondent was appointed on temporary basis and her services were regularized in the year 1971, the recruitment rules governing appointment to the post of Second Grade Clerk did not prescribe passing of the typing examination at all as a prescribed qualification. When the matter stood thus, for the first time, the Government of Madhya Pradesh issued the Circular (Annexure-A/5) dated 19/04/1968 offering incentive of two advance increments to all Lower Division Clerks who pass typing examination in Hindi conducted by any Board/Institution recognized by the Government of Madhya Pradesh. Although that Circular was issued in the year 1968, it appears that the second respondent did not appear or pass the typing examination in Hindi conducted by any Board recognized by the Government of Madhya Pradesh. Then came another Circular (Annexure-A/6) issued by the Government of Madhya Pradesh dated 03/06/1977. For the first time, the Government of Madhya Pradesh prescribed passing of the typing examination in Hindi conducted by any Board/Institution recognized by the Government of Madhya Pradesh as one of the prescribed qualifications for

the post of Lower Division Clerk. Having so prescribed, the Government, however, directed that that prescription should not be insisted for appointment in the case of candidates belonging to scheduled castes and scheduled tribes. That Circular further directed the District Collectors in the State to conduct typing examination in Hindi at their respective district level for the benefit of all candidates desirous of passing the typing examination in Hindi. The Circular (Annexure-A/6) itself would show that in the assessment of the Government itself passing of the typing examination conducted by a Board/Institution recognized by the Government of the Madhya Pradesh and passing of the typing examination in Hindi conducted by the Collectors at the district level are equivalent, otherwise the Government having prescribed passing of typing examination, in Hindi, as one of the prescribed qualifications for the post of Lower Division Clerks ought not to have directed the District Collector to conduct typing examination not only for the benefit of the candidates belonging to scheduled castes and scheduled tribes but also for the benefit of the candidates belonging to all categories. The only technical argument raised by the petitioner/State authorities that the second respondent did not pass the typing examination in Hindi conducted by a Board recognized by the State Government would not be a justification either for the Government or for the Court to deny the benefit of Annexure-A/3 Circular to the second respondent who has passed the typing examination in Hindi conducted by the Collector, Raigarh. We also find soundness in the reasoning of the Tribunal in para 5 of the impugned order. Annexures-A/5 and A/6 are issued by the General Administration Department of the State Government. Above all, we have one more weighty reason not to interfere with the impugned order. We say this,

because, for the second respondent in order to continue in service as Lower Division Clerk (Second Grade Clerk), there was no legal obligation to pass typing examination in Hindi conducted by any Board recognized by the Government of Madhya Pradesh or the typing examination in Hindi conducted by the Collector, Raigarh. If this is the undisputable position, an effort made by the second respondent to acquire a qualification should not be allowed to be without recognition and incentive. That is the rationale of the Annexure-A/5 Circular. Since the second respondent has acquired a qualification which qualification, in the context, is equivalent to passing of typing examination in Hindi conducted by any Board or Institution recognized by the Government of Madhya Pradesh, it was imperative for the Government to extend the incentives to her as provided in Annexure – A/5 Circular. Looking from any angle, no ground is made out by the petitioner-State authorities to interfere with the impugned order passed by the Tribunal. In our considered opinion the order of the Tribunal is just, fair and equitable and it does not call for interference. The writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Brajesh